of the chargee. The signature of Muthuraman Chettiar s/o Yegappa Chettiar as attorney appears above the words "Signature of the Chargee" in Jawi. The whole thing is clear from the English translation of the charge which was never questioned. It was contended by counsel for the respondent that there was no ground of appeal in relation to the learned judge's finding that the charge was not signed by the appellant at the time of execution. In my opinion, it was not necessary to raise a ground of appeal in respect of something which is obvious on the face of the charge itself.

The learned judge lastly held that as the memorandum of charge did not specifically provide for interest after the day appointed for repayment of the loan, no interest was payable after such date. (See Das on the "Torrens System in Malaya" page 44; *Arumugam* v. *Leonard*[5] and *Suchait Singh* v. *Shir Ali Khan*[6]). He further held that the statement of accounts furnished by the appellant as regards the amount of interest which had already been paid by the respondent should be re-opened under section 21(2) of the Moneylenders Ordinance and examined by the Assistant Registrar of the court on a date to be fixed.

It is true that the charge itself did not provide for interest after the date appointed for repayment, but there was a clear provision for it in clause 2 of the memorandum of agreement. As I have already said, the memorandum of agreement and the memorandum of charge must be read together. I am therefore of the opinion that interest was payable after the date appointed for repayment, subject to the limitation set out in section 21(5) of the Limitation Ordinance, 1953 which provides that no action to recover arrears of interest payable in respect of any money secured by a charge shall be brought after the expiration of 6 years from the date from which the interest became due. I understand this provision to mean that the appellant cannot claim more that 6 years' interest which at the rate agreed comes to $10,800 of which a sum of $4,650 has been paid by the respondent leaving a balance of $6,150.

For reasons I have stated I would allow the appeal, set aside the order of the learned judge and make an order for the sale of the charged lands for the recovery of the sum of $21,150 as being the amount due on the charge. There will be a further order as required under section 257 of the Land Code that the sale do take place on a suitable date after June 30, 1977. The respondent must pay the costs of this appeal and costs in the court below. The deposit will be refunded to the appellant.

Ong Hock Sim F.J. and **Raja Azlan Shah F.J.** concurred.

Appeal allowed.

Solicitors: *Jayadeva & Zahir; Visva & Co.*

I.C.I. CHEMICAL DISTRIBUTORS (M) SDN. BHD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[F.C. (Ali, Raja Azlan Shah and Wan Suleiman F.JJ.) June 7, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 24 of 1976]

Revenue Law — Income Tax — Malaysian Company with business also in Singapore — Cessation of business of company in Singapore — Income tax paid under cessation provisions in Singapore — Whether company liable for tax in Malaysia — Double Taxation Relief (Republic of Singapore) Order, 1966 — Double Taxation Relief (Republic of Singapore) Order, 1968 — Income Tax Act, 1967.

The appellant in this case was a Malaysian company which also carried on business in Singapore. The Company ceased its Singapore business on December 31, 1968. On cessation of the business in Singapore, the cessation provisions as contained in the Singapore Income Tax Ordinance were applied and the appellant was assessed to the Singapore income tax for the year of assessment 1968 on the income for that year ending December 31, 1968 instead of on 1967 income only. The financial year of the company in Malaysia ended on September 30th and the company was assessed on the Singapore income of $293,237 from October 1, 1967 to September 30, 1968 for the year of assessment 1969 and for the Singapore income of $109,886 from October 1, 1968 to December 31, 1968 for the year of assessment 1970. They appealed to the Special Commissioners of Income Tax who held that the appellants had acquired a right to exemption under the 1966 agreement, which had not and could not be taken away from them. On appeal by way of case stated to the High Court, the learned judge held that the 1966 agreement as amended only enabled the appellant to escape double taxation up to and including the year of assessment 1968. He therefore held that appellant was liable for tax in Malaysia for the years of assessment 1969 and 1970. The appellant appealed.

Held: (1) it was clear on the interpretation of the double-tax agreements that any right to be exempted from double taxation (or to be given credit for tax paid) ceased after the year of assessment, 1968 and the Double Tax agreement of 1968 did not apply;

(2) similarly there could be no extension of the right to bilateral credit as the Double Tax Agreement of 1966 was limited to the last day of the year of assessment 1968 and the provisions of the 1968 agreement could not apply to the company.

[Editorial Note: In view of the demise of Ali F.J., the court asked both counsel for the parties under section 42 of the Courts of Judicature Act, 1964 whether they consented to accept judgments by the remaining judges of the court, it being understood that if there was no majority opinion the proceedings should be re-heard. Both counsel consented.]

Cases referred to:-

(1) *Partington* v. *Attorney-General* L.R. 4 H.L. 100, 122.

(2) *Brown* v. *National Provident Institution* 8 T.C. 57.

(3) *Whelan* v. *Henning* 10 T.C. 263.

FEDERAL COURT.

S. Woodhull for the appellants.

Bakaruddin bin Suleiman (Senior Federal Counsel) for the respondent.

Wan Suleiman F.J.: This is an appeal from the decision of Azmi J. The judge had allowed the appeal by way of Case Stated by the Special Commissioners of Income Tax under paragraph 34 of Schedule 5 of the Income Tax Act, 1967 at the instance of the Director-General of Inland Revenue.

The facts of the case as admitted or proved are set out in the judgment of the learned judge the relevant portion of which I set out hereunder:

"The respondent is a company incorporated in Malaysia on December 24, 1965. It commenced business in Malaysia on April 1, 1966, and in Singapore, through a permanent establishment, on the same day. The respondent is ordinarily resident in Malaysia at all relevant times and its financial year ends on 30th September. The Singapore business ceased on December 31, 1968 whilst the Malaysian business continued until October 1, 1970. The day to day management of the Singapore branch of the respondent was carried out by the Manager of the branch which had its own establishment. Policy matters were dictated from Kuala Lumpur. Bank accounts of the branch were operated in Singapore as well as in Kuala Lumpur, and the branch accounting was done in Singapore. The turnover of the Singapore branch for 1967/68 was 14.1 million dollars. The Singapore branch was taken over by I.C.I. Singapore Ltd., a wholly owned subsidiary of the I.C.I. Ltd., London. The I.C.I. Singapore Ltd. was later renamed I.C.I. Singapore (Pte) Ltd. It was, however, agreed by the parties that the provisions of paragraph 98 of Schedule 9 to the Income Tax Act, 1967 would not apply as there was an 'acquisition' within the meaning of paragraph 105 of the said Schedule. On cessation of the business in Singapore, the cessation provisions as contained in section 35(5) of the Singapore Income Tax Ordinance were applied and the respondent was assessed to the Singapore income tax for the year of assessment 1968 on the income for the year ended December 31, 1968 instead of 1967 income only. There was no further assessment raised in Singapore for the year of assessment 1969 or that of 1970. As the financial year of the respondent ended on September 30 each year in Malaysia, the respondent was assessed to tax for the years of assessment 1969 and 1970 on the combined Singapore and Malaysian income for the financial year ending September 1969. As a result, the Singapore income of $293,237 for the period October 1, 1967 to September 30, 1968, and the Singapore income of $109,886 for the period October 1, 1968 to December 31, 1968 were again assessed to Malaysian tax. The Singapore income included in the Malaysian assessment are as follows:

Assessment Year 1969		
(Based on income for year ended 30.9.1968)		
Malaysian Income (Net) (1.10.67 to 30.9.68)		$2,573,177.00
Singapore Income (1.10.67 to 30.9.68)	$ 293,237.00	
Less: W. & T. Allowance	14,874.00	278,363.00
		$2,851,540.00
Income Tax @ 40%	$1,140,616.00	
Development Tax @ 5%	142,577.00	
	$1,282,193.00	
Assessment Year 1970		
(Based on income for year ended 30.9.1969)		
Malaysian Income (1.10.68 to 30.9.69)		$2,986,134.00
Singapore Income (income for 1.10.68 to 31.12.68 only, since business ceased on 31.12.68)		109,886.00
Chargeable Income		$3,096,020.00
Income Tax @ 40%	$1,238,408.00	
Development Tax @ 5%	154,801.00	
	$1,393,209.00	

It is in respect of assessment of its income tax relating to Singapore income for the years of assessment 1969 and 1970 as stated above that respondent had appealed to the Special Commissioners of Income Tax. The question for determination by the Special Commissioners of Income Tax was whether the sum of $293,230 and $109,886 which represented income of the respondent derived and received from the Republic of Singapore were assessable to Malaysian tax for the years of assessment 1969 and 1970 respectively. Alternatively, whether the appellant was right in disallowing the claim for bilateral credit in respect of tax paid in Singapore for the years of assessment 1967 and 1968 of the same income. They found in favour of the respondent. After reviewing the provisions of both the double taxation agreements of 1966 and 1968 between the Government of Malaysia and the Republic of Singapore, they came to the conclusion that the exemption of the Singapore income from further Malaysian tax was a right acquired under the 1966 agreement which they say cannot be taken away except by way of specific agreement to the contrary. They further held that the exemption granted under the 1966 agreement had been re-confirmed under clause 2 of Article XXI of the said Agreement. Accordingly they decided that in the ascertainment of the Respondent's total income for the years of assessment 1969 and 1970, the income derived in and remitted from Singapore was exempted from tax under and in accordance with the relevant provisions of the 1966 agreement. They accordingly ordered that the additional assessments as contained in the notices of additional assessment dated September 23, 1972 and March 18, 1972 in respect of the years of assessment 1969 and 1970 respectively be amended to give effect to their decision. In view of their decision, they did not proceed to consider the alternative ground of appeal by the respondent."

Before us as well as in the court below, counsel for the appellant had cited authorities and referred to learned works on Interpretation of Statutes which leave me in no doubt that as Lord Cairns said in *Partington* v. *The Attorney-General*[1]:

"... if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute."

On the facts as agreed and found, the assessibility to tax of the appellant must be governed by the provisions of:

(i) Double Taxation Relief (Republic of Singapore) Order, 1966 (in brief, D.T.A. 1966);

(ii) Double Taxation Relief (Republic of Singapore) Order, 1968 (in brief, D.T.A. 1968); and

(iii) The Income Tax Act, 1967.

The learned trial judge held that applying the accepted rules of construction in taxing statutes, the Special Commissioners had, on the face of the records, erred in law when they found that the 1966 D.T.A. applied to income tax assessed in Malaysia for the years of assessment 1969 and 1970. This was his finding on the principal issue in this case.

The D.T.A. 1966 as amended, he said, clearly provides that it enables the appellant (respondent before him) to escape double taxation up to and including the year of assessment 1968.

He also remarked that there is at least one important distinction between the two agreements. The relief granted under the 1968 agreement consists in the granting of *credit* by the Malaysian authorities against tax payable in respect of income which would otherwise be taxed twice, whereas paragraph 1(a) of Article IV of the D.T.A. 1966 ensures that no further tax shall be imposed in Malaysia on profits of such permanent establishment as the Singapore branch which are remitted to Malaysia.

I myself would say that these two differently worded provisions are merely two ways to achieve the same thing, and that what really matters is that the relief from further taxation of such profits under the 1966 D.T.A. is not carried forward beyond the year of assessment 1968, so that there can be no question

of granting credit under the 1968 D.T.A., which only provides relief from the year of assessment 1969 onwards.

I would respectfully agree with the learned judge that both the 1966 and 1968 agreements have not made any provisions for relief in the unusual circumstances in which the appellant has found itself.

Did the learned judge fail to appreciate the distinction at law between income of the basis period for the computation of tax and income for the year of assessment? This ground should be considered together with the one following: that no tax could be imposed for the year of assessment as no source of income or profits and gains were in existence in the year of assessment.

The following passage from the Grounds of Judgment seems to me to be adequate answer to the above grounds:

"As stated earlier on, since the financial year of the respondent ends on September 30, for the year of assessment 1969, the period between October 1, 1967 and September 30, 1968 clearly falls within the basis year of the 1969 year of assessment, and there is no dispute that during that period the respondent had received income from Singapore to the tune of $293,237. Similarly, for the assessment year 1970, the period between October 1, 1968 to December 31, 1968 — the latter being the date when the business of the Singapore permanent establishment ceased operation — comes within the 1970 year of assessment, and there is no dispute also that during this period the respondent received income from Singapore the sum of $109,886. It is common ground that the respondent has been taxed in Singapore in respect of the income of these two periods, and this was done by the Singapore authority under the specific provision of section 35 of the Singapore Income Tax Act because of the cessation of business of the respondent on December 31, 1968. It is relevant to note that the respondent ceased to do business on December 31, 1968 and under section 35A of the Singapore Income Tax Act (Revised — 1970), i.e. under the cessation provisions, for the year of assessment 1968 it was taxed in respect of income derived in 1968 itself. Normally, of course, for the year of assessment 1968 it would be taxed in respect of income derived in 1967, and for the preceding year of assessment (i.e. assessment year 1967) section 35B applies. In my view, the mere fact the respondent has been taxed in Singapore under the cessation provision of the Singapore law should not affect the provisions of the 1966 and 1968 agreements, which for the purpose of computation are based on the year of assessment. Since the respondent ceased to carry on business in Singapore by the end of 1968, I see no justification in law why the Malaysian authorities cannot assess tax under our domestic revenue law for the years of assessment 1969 and 1970."

Learned counsel for the appellant has relied on, *inter alia*, two English authorities — *Brown* v. *National Provident Institution*[2] and *Whelan* v. *Henning*[3] as support for the proposition contained in that latter ground. However, it is clear that those authorities are based on interpretation of the English Income Tax laws, the relevant portions of which I am unable to say correspond with ours, and do not lay down general principles.

Another point which does not come, strictly speaking, within any of the grounds of appeal was also raised, i.e. that under Article XVIII paragraph 1 of the D.T.A. 1968 Singapore law and not Malaysian law should be applicable to Singapore income so that such tax paid in Singapore should be allowed as credit against Malaysian tax chargeable in respect of the same income. This contention again overlooks what has been said before — that any right to be exempted from double taxation (or to be given credit for tax paid) ceases after the year of assessment 1968, so that the D.T.A. 1968 does not apply.

Regarding the alternative issue, the learned trial judge rightly apprehended, I would say with respect, that appellant's contention is that if the Singapore income is taxable in Malaysia, bilateral relief or credit should be given for the years of assessment 1969 and 1970 under Schedule 7 paragraphs 1 to 10 of the Income Tax Act, 1967. I regret however that I cannot agree with him that the D.T.A. 1968 over-rides the provisions of Schedule 7, for that Schedule is not inconsistent with it. "Bilateral credit" under paragraph 16 in Schedule 7 means "credit in respect of foreign tax which, by virtue of any arrangements having effect under section 132, is to be allowed as a credit against Malaysian tax". The "arrangement", in this instance, would be the D.T.A. 1968. My answer to the question posed by this issue is that because of the amendment to Article XXI thereof, which limits the 1966 D.T.A. to the last day of the year of assessment 1968, there can be no extension of the right to bilateral credit, a right which accrues only because of the provisions of Article XVIII of the 1968 D.T.A. to the appellant company whose rights in this matter are governed by the earlier D.T.A. The net result is that the appellant again fails on this issue.

For the reasons given above, I would dismiss this appeal with costs here and in the court below.

Raja Azlan Shah F.J. concurred.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.*

KETUA PENGARAH KASTAM v. HO KWAN SENG

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) June 8, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 92 of 1975]

Administrative Law — Cancellation of registration as forwarding agent — Whether rules of natural justice apply — Right to be heard — Whether there was excess of jurisdiction or error of law — Customs Act, 1967, ss. 90(3) and (4).

The respondent, who had been granted permission to transact business as a forwarding agent relating to the import and export of goods, had been convicted of two offences under the Customs Act. The respondent lodged notice of appeal but there was no stay of execution. A senior officer of customs then informed the respondent of his decision to cancel the registration of the forwarding agency. The respondent appealed to the same senior customs officer but was told that his matter had been reconsidered but the earlier decision could not be revoked. The respondent then appealed to the Comptroller-General but the appeal was dismissed. He then applied to the High Court for an order of *certiorari* to quash the decision of the senior officer of customs and the High Court granted the application on the ground that the cancellation was premature as the appeal against the convictions was still pending. The Comptroller-General appealed to the Federal Court.

Held, allowing the appeal: (1) the rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial" or "administrative" or whether or not the enabling statute makes provision for a hearing;

(2) in this case the respondent had been given a chance of a fair hearing;

(3) it was within the power of the customs officer to cancel the forwarding agency when the respondent was con-